

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|-----------------------------------|---|--------------|
| GERARD W. ATCHINSON, SR., | : | |
| | : | |
| Plaintiff, | : | CIVIL ACTION |
| | : | |
| v. | : | NO. 08-3257 |
| SEARS, SEARS HOLDINGS | : | |
| CORPORATION, SEARS HOLDINGS, | : | |
| SEARS, ROEBUCK AND CO., and SEARS | : | |
| HOME IMPROVEMENT PRODUCTS, | : | |
| | : | |
| Defendants. | : | |
| | : | |

ORDER

AND NOW, this 17th day of August, 2009, upon consideration of the Motions filed by both parties, it is hereby **ORDERED** as follows:

- (1) The Motion of Defendants, Sears, Sears Holdings Corporation, Sears Holdings, Sears, Roebuck and Co., and Sears Home Improvement Products, for Leave to File a Sur-Reply (Doc. No. 20), is **GRANTED**.
- (2) The Motion of Plaintiff Gerard W. Atchinson, Sr. for Leave to Amend his Complaint (Doc. No. 17) is **GRANTED IN PART**, and **DENIED IN PART**, as set forth in the attached memorandum.
- (3) Plaintiff is granted leave to withdraw his claim under ERISA and to amend his Complaint to include a claim for breach of contract. The Motion to Amend is denied in all other respects.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE